

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

ROBERT JOHN WALLING,

Plaintiff,

v.

**NANCY A. BERRYHILL, Acting
Commissioner of Social Security,**

Defendant.

Case No. CIV-17-884-G

ORDER

On February 25, 2019, the Court entered an Opinion and Order and a Judgment reversing the decision of the Acting Commissioner and remanding this case for further proceedings. *See* Doc. Nos. 28, 29. Plaintiff Robert John Walling now requests an award of attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412. *See* Pl.'s Mot. Att'y Fees (Doc. No. 30). Defendant has filed no objection to Plaintiff's request within the time allowed. *See* LCvR 54.2.

Having considered Plaintiff's unopposed request and the relevant record, the Court finds that: (1) Plaintiff "is a 'prevailing party'; (2) the position of the United States was not 'substantially justified'; and (3) there are no special circumstances that make an award of fees unjust" in this case. *Hackett v. Barnhart*, 475 F.3d 1166, 1172 (10th Cir. 2007) (quoting 28 U.S.C. § 2412(d)(1)(A)). The Court therefore GRANTS Plaintiff's request (Doc. No. 30) and awards fees in the amount of \$4093.70, with said amount to be paid directly to Plaintiff and sent in care of Gayle L. Troutman, 1350 S. Boulder, Tulsa, Oklahoma, 74119. If attorney's fees are also awarded under 42 U.S.C. § 406(b), Plaintiff's

counsel shall refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

IT IS SO ORDERED this 19th day of April, 2019.



CHARLES B. GOODWIN
United States District Judge